

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:	Case No.: 24-30168
Stark Energy, Inc.,	Chapter 11, Subchapter V
Debtor.	

**GATE CITY BANK’S MOTION TO CONVERT CASE TO CHAPTER 7, OR  
ALTERNATIVELY, TO REMOVE DEBTOR IN POSSESSION**

Gate City Bank, an Interested Party and creditor in the above-captioned Chapter 11, Subchapter V case, hereby moves this Court (the “**Motion**”), through undersigned counsel, to convert this Chapter 11, Subchapter V case to Chapter 7, or in the alternative, to remove the Debtor in Possession. In support of this Motion, Gate City states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this Subchapter V case and this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue of this Subchapter V case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.
4. The statutory and legal predicates for the relief requested herein are 11 U.S.C. Section 1112(b), 1185(a), and Bankruptcy Rules 1017(f)(1) and 9013.

**FACTUAL BACKGROUND**

5. Between February 19, 2018, and March 26, 2021, Gate City Bank made a series of loans to Stark Energy, Inc. (“**Debtor**”). To secure those loans, Debtor granted Gated City

Bank a security interest in certain vehicles and trailers (the “**Collateral**”). Gate City Bank properly perfected its security interest in the Collateral.

6. Concurrent with the foregoing loans, on July 19, 2021, Debtor financed the purchase of two Kenworth trucks from Midland States Bank (“**Midland**”). When Debtor defaulted on its obligations to Midland, in June of 2023, Midland commenced suit against Debtor. On July 21, 2023, Midland obtained an order against Debtor, requiring surrender of the two Kenworth trucks.

7. Debtor did not surrender the Kenworth trucks to Midland. Instead, the same day as the surrender order was entered, Debtor’s principal messaged an associate, asking to move a vehicle to the associate’s lot. Two days later, on July 23, 2023, Debtor’s principal again messaged the associate, advising that he was moving another vehicle to the lot.

8. On September 12, 2023, due to Debtor’s defaults on its loan obligations, Gate City Bank commenced suit against Debtor in North Dakota state court.

9. On September 27, 2023, an order to show cause hearing was held in North Dakota state court to determine whether Debtor should be held in contempt for failing to surrender the two Kenworth trucks to Midland. Debtor was found to be in contempt, and was ordered to surrender the Kenworth collateral to Midland by October 4, 2023.

10. When Debtor failed to surrender the Kenworth trucks to Midland, on October 5, 2023, the state district court entered a bench warrant for the arrest of Debtor’s principal, Robert Fetting.

11. On October 11, 2023, Gate City Bank obtained a prejudgment seizure order, requiring Debtor to surrender the Collateral to Gate City Bank. Debtor was served with a copy of this order on October 17, 2023.

12. On October 20, 2023, Debtor's principal was arrested on the outstanding Midland bench warrant.

13. On October 21, 2023, Yuker Towing towed two pieces of the Collateral to Debtor's property. That same day, law enforcement was present at Debtor's property, and observed more of the Collateral present.

14. On October 22, 2023, while still in custody, Debtor's principal exchanged text messages regarding how pieces of Debtor's equipment needed "to go[.]"

15. Debtor's principal appeared before the state district court on October 23, 2023, for bond related to the bench warrant. Debtor's principal denied any knowledge regarding the location of the Kenworth trucks serving as Midland's collateral.

16. On October 31, 2023, despite being ordered to surrender Gate City Bank's Collateral, Debtor continued to use the Collateral in its operations.

17. On November 14, 2023, Debtor and Debtor's principal again denied knowledge of the location of the Kenworth trucks serving as Midland's collateral under oath in the North Dakota state court. When asked what equipment Debtor was using for its operations, Debtor's principal invoked his Fifth Amendment right to remain silent.

18. Later that same day, an order to show cause was held to determine whether Debtor should be held in contempt for failing to surrender Gate City Bank's Collateral. Debtor's principal testified under oath that he had not seen the Collateral for a "couple months[.]" and denied knowledge of what happened to the Collateral.

19. Two days later, on November 16, 2023, Debtor was using the Collateral in its operations. That same day, the state district court found Debtor in contempt for failing to surrender the Collateral, and ordered that Debtor surrender the Collateral and the cellular

phone of Debtor's principal for analysis. Debtor failed to surrender any Collateral, or the cell phone of its principal.

20. Thereafter, on December 8, 9, 14, and 15, 2023, as well as on January 9, February 1, February 3, February 8, February 12, February 23, February 26, February 28, February 29, March 3, March 15, March 16, March 17, March 18, March 19, March 20, March 21, March 28, April 1, April 4, April 8, April 10, April 11, April 13, April 15, and April 16, 2024, Debtor continued to use the Collateral in its operations. Debtor's principal provided a majority of these services with the Collateral.

21. Gate City Bank eventually was able to ascertain the location of the majority of the Collateral at Yuker Towing in Dickinson, North Dakota. Law enforcement seized the Collateral present at Yuker Towing on March 15, 2024, and surrendered the same to Gate City Bank. Thereafter, Gate City Bank prepared to liquidate the Collateral, with the proceeds to be applied to Debtor's debt owed to Gate City Bank.

22. A sheriff's sale was noticed for April 23, 2024. However, Debtor filed a voluntary petition for relief under Subchapter V of Chapter 11 of the United States Bankruptcy Code early that morning prior to the conclusion of the online auction sale.

23. On May 1, 2024, Gate City Bank moved for relief from the automatic stay "for cause," arguing Debtor's bad faith justified the requested relief. ECF No. 16. This Court conducted an evidentiary hearing on Gate City Bank's request on July 9 and 10, 2024. ECF Nos. 131 & 136. Following oral argument from Debtor and Gate City Bank, this Court entered its order, finding that Debtor had engaged in a bad faith filing, entitling Gate City Bank to relief from the automatic stay with respect to the Collateral. ECF Nos. 150 & 151.

**RELIEF REQUESTED AND BASIS THEREFOR**

**I. Debtor’s established bad faith conduct is “cause” for conversion of this case.**

24. By this Motion, Gate City Bank seeks entry of an order converting this case to a Chapter 7 case under Section 1112(b). In relevant part, Section 1112(b) provides a “court shall convert a cause under [Chapter 11] to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .” 11 U.S.C. § 1112(b)(1). While not specifically identified, *cf.* 11 U.S.C. § 1112(b)(4) (setting out a non-exhaustive list of “causes” for dismissal or conversion under Section 1112(b)), Courts have determined that a debtor’s bad faith is “cause” for conversion or dismissal under Section 1112(b)(1). *In re Kerr*, 908 F.2d 400, 404 (8th Cir. 1990).

25. Based on the evidence pertinent to the relevant factors, this Court has already determined that Debtor acted in bad faith. ECF Nos. 150 & 151. Accordingly, Gate City Bank incorporates this Court’s prior findings and conclusions to establish Debtor’s bad faith.

**II. Conversion is in the best interest of creditors.**

26. Upon a finding of cause, a court must determine whether conversion or dismissal of a case is in the best interest of the creditors and the estate. 11 U.S.C. § 1112(b)(1). There is no bright line test to determine whether conversion or dismissal is in the best interest of creditors and estate. *In re Fleetstar LLC*, 614 B.R. 767, 781 (Bankr. E.D. La. 2020) (quoting *In re Babayoff*, 445 B.R. 64, 81 (Bankr. E.D.N.Y. 2011)). Instead, that decision is left to the sound discretion of the bankruptcy court. *See Lumber Exchange Bldg., Ltd. v. Mutual Life Ins. Co. (In re Lumber Exchange Bldg., Ltd.)*, 968 F.2d 647, 648 (8th Cir. 1992). Here, conversion is in the best interests of the creditors and the estate.

27. With respect to the estate, “[t]he best interest of the estate turns on whether its economic value is greater in or out of bankruptcy.” *In re Delta AG Group, LLC*, 596 B.R. 186, 201 (Bankr. W.D. La. 2019). “When the estate has no assets with equity that a trustee could liquidate to pay unsecured creditors, dismissal is in the best interests of creditors and the estate. When there are estate assets with equity, conversion is the better course.” *Id.* In this case, because Debtor has unencumbered assets that could be sold to the benefit of the creditors, conversion, rather than dismissal, would be in Debtor’s best interest.

28. Conversion in this case to Chapter 7 is preferred and clearly in the best interests of creditors because if the case is dismissed, then it will be exceedingly difficult for creditors to pursue and collect on any judgment against the Debtor as demonstrated by the past contumacious conduct of Debtor’s principal, Robert Fettig, in concealing and/or deliberately refusing to turn over secured collateral despite repeated court orders.<sup>1</sup>

29. Debtor disclosed unencumbered assets valued as \$78,003.88 in the liquidation analysis submitted previously in support of Debtor’s First Amended Plan of Reorganization submitted on September 25, 2024 (the “Proposed Plan”). ECF No. 176. However, Debtor appears to once again be obfuscating the truth by failing to list at least one piece of equipment currently being used to operate the business as unencumbered in the liquidation analysis.

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<sup>1</sup> Gate City Bank was forced to bring yet another motion to hold Robert Fettig in contempt on August 29, 2024, with respect to a 2013 Ford pickup truck and a 2019 Harley Davidson motorcycle that was Gate City Bank’s secured collateral in Stark County District Court, Case No. 45-2023-CV-0075. This was barely one month after the Bankruptcy Court’s ruling on Gate City Bank’s motion to lift the automatic stay which occurred on July 25, 2024. Copies of the Stark County District Court’s Contempt Order dated August 29, 2024, and counsel for Gate City Bank’s letter to Judge Rhonda Ehlis also dated August 29, 2024, are attached as **Exhibit A**.

30. The Debtor's Liquidation Analysis identifies the unencumbered assets as follows:

Exhibit A

ESTIMATED LIQUIDATION VALUE

ASSETS <sup>1</sup>	
Cash on hand	\$167.73
Accounts receivable	\$0.00
Inventory	\$0.00
Office furniture & equipment	\$0.00
2004 Ford F-150 / VIN: 1F1PXL4524NB13169	\$4,500.00
2010 Ford F-150 / VIN: 1F1FW1EV3AFB85081	\$2,600.00
2019 Load Trail Bumper Hitch Trailer VIN: 4ZECH2225K1188720	\$6,500.00
2019 Load Trail Dump Trailer VIN: 4ZEDT1427K2189694	\$8,500.00
2011 Tiger Bumper Hitch Trailer VIN: 5U1BU1623BM000887	\$1,600.00
Building & Land • 1.14 x 1.14 x 1.14 x 1.14 • 3.34 x 1.14 x 1.14 x 1.14	\$53,836.15
Customer list	\$100.00
Lawsuits or other claims against third-parties	0.00
Other intangibles	\$200.00
<b>Total Unsecured Assets</b>	<b>\$78,003.88</b>

*Id.*, at 17.

31. The piece of equipment (S-211 which is a 2012 Peterbilt 367, VIN# 1XPTP4TX1CD147318) which was not disclosed in the liquidation analysis has been consistently used in the Debtor's ongoing business operations and the Debtor's principal was clearly aware it was unencumbered. S-211 was scheduled as follows on Schedule B:

47.242012 Peterbilt 367 / VIN: 1XPTP4TX1CD147318

unknown

\$38,500.00

ECF No. 27, at 14; *see also* ECF No. 116, Ex. A (identifying S-211).

32. Mr. Fettig testified as follows during his deposition:



21 Q. Do you recall that repossession officers --  
22 or repossession companies were looking for --

23 A. Yeah, I recall a driver was approached in  
24 S-211, and it was free and clear, and he was pissed  
25 off, and he wanted to know where the rest of the

1 trucks were.

2 Q. So --

3 A. And then my driver said that I -- I was  
4 going to lose S-211.

5 And I said: Where are you at right now?  
6 That truck's free and clear. There's no way I'm  
7 losing that truck.

ECF No. 120, Tr., at 119:21-120:7.

33. Conversion would clearly benefit creditors by the appointment of a Chapter 7 Trustee to oversee the Debtor's liquidation. *Cf. In re M.A.R. Designs & Constr., Inc.*, 653 B.R. 843, 872 (Bankr. S.D. Tex. 2023) (conversion, rather than dismissal, was in the creditors' best interest as the appointment of "a Chapter 7 trustee would be better positioned to investigate and effectively liquidate the" debtor's estate in light of distrust in debtor's principal based on "numerous findings of bad faith").

**III. Alternatively, the Debtor-in-Possession should be removed pursuant to 11 USC § 1185**

34. Following notice and hearing, a court "shall" remove a debtor in possession "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of debtor, either before or after the date of commencement of the case[.]" 11 U.S.C. § 1185(a); *see also In re Comedymix, LLC* 647 B.R. 457 (where the debtor, through disobedience to court



orders and refusal to be bound by the law, shows himself unable to act as a fiduciary, removal of the debtor from possession and appointment of a trustee is appropriate).

35. Debtor's principal, Robert Fettig, has proven by his past fraudulent conduct and his complete and utter disregard of court orders that he is unable to act as a fiduciary for the benefit of the creditors.

36. The Debtor still has not retained a professional to rectify the failure to file tax returns and has no possible chance of a successful reorganization based on the monthly operating reports that have been filed—as pointed out by the U.S. Trustee in its objection to the Plan. *See* ECF No. 184. If the case is not converted to Chapter 7, then the next best option would be to remove the Debtor-In-Possession and appoint a Subchapter V trustee to file a liquidating plan.

### **CONCLUSION**

37. WHEREFORE, Gate City Bank respectfully requests that this Court convert this case to one under Chapter 7, or alternatively, remove the Debtor-in-Possession.

Dated: January 15, 2025.

**VOGEL LAW FIRM**

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ATTORNEYS FOR GATE CITY BANK

**VERIFICATION**

I, Kevin Warner, Vice President of Gate City Bank, based on my personal information and belief, declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: \_January 13, 2025

Signed:   
Kevin Warner

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:	Case No.: 24-30168
Stark Energy, Inc.,	Chapter 11, Subchapter V
Debtor.	

**NOTICE OF MOTION TO CONVERT CASE, OR ALTERNATIVELY, TO  
REMOVE THE DEBTOR-IN-POSSESSION**

TO: ALL CREDITORS AND INTERESTED PARTIES:

NOTICE IS HEREBY GIVEN that Gate City Bank, an Interested Party and creditor of the Debtor Stark Energy, Inc., has filed a Motion to Convert Case, or Alternatively, to Remove the Debtor-In-Possession, a copy of which motion is annexed hereto and herewith served upon you.

NOTICE IS FURTHER GIVEN that written objections to said motion, if any, shall be filed with the Clerk of the United States Bankruptcy Court, whose address is 655 First Avenue North, Suite 210, Fargo, ND 58102-4932, with a copy mailed to counsel for Gate City Bank, whose name and address is listed below, within twenty-one (21) days from the date of the mailing of this Notice. Any objections not filed and served may be deemed waived.

Dated this 15th day of January, 2025.

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ATTORNEYS FOR GATE CITY BANK

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:

Stark Energy, Inc.,

Debtor.

Case No.: 24-30168

Chapter 11, Subchapter V

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2025, the following documents:

**GATE CITY BANK'S MOTION TO CONVERT CASE, OR ALTERNATIVELY, TO  
REMOVE THE DEBTOR IN POSSESSION**

**NOTICE OF MOTION TO CONVERT CASE, OR ALTERNATIVELY, TO  
REMOVE THE DEBTOR IN POSSESSION**

were filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

**ALL PARTIES BY ECF**

I further certify that a copy of the foregoing documents will be mailed by first-class mail, postage paid, to the following non-ECF participants:

*See attached Creditor Matrix*

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Label Matrix for local noticing  
0868-3  
Case 24-30168  
District of North Dakota  
Fargo  
Mon Jan 13 13:18:29 CST 2025

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